

MR. AND MRS. MICHAEL BOSCH
HOWARD C. BOSCH

IBLA 92-356

Decided June 8, 1994

Appeal from a decision of the Grants Pass Resource Area Manager, Medford District Office, Bureau of Land Management, denying a request to purchase certain public land. OR 45389.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Land-
Use Planning--Federal Land Policy and Management Act of 1976:
Sales

Under sec. 203(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713(a) (1988), in order to be eligible for public sale a tract of public land must be identified for disposal in the applicable land use planning documents.

2. Federal Land Policy and Management Act of 1976: Land-
Use Planning--Federal Land Policy and Management Act of 1976:
Sales

A BLM decision denying a request to purchase a tract of public land will be affirmed where disposal of the tract does not conform to the approved management framework plan and the record supports a finding that the request does not warrant further consideration.

APPEARANCES: Mr. and Mrs. Michael Bosch, Cave Junction, Oregon, pro sese; Howard C. Bosch, Cave Junction, Oregon, pro se.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Mr. and Mrs. Michael Bosch and Howard C. Bosch have appealed from a March 30, 1992, decision of the Grants Pass Resource Area Manager, Medford District Office, Bureau of Land Management (BLM), denying their request, filed on March 11, 1992, to purchase, through direct noncompetitive sale, lot 7, sec. 23, T. 40 S., R. 8 W., Willamette Meridian, Oregon, described in their request as "a 26.5 acre parcel." They filed their request pursuant

to section 203(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1713(a) (1988). ^{1/}

In a previous decision, Mr. & Mrs. Michael Bosch, 119 IBLA 370 (1991), this Board had set aside and remanded a decision of the Grants Pass Resource Area Manager providing notice of the institution of formal trespass proceedings and requiring the removal of unauthorized property located on lot 7. In that decision, we found that the appellants had no right to occupy a residence and use five outbuildings on lot 7 under the authority of a life estate occupancy lease issued to Michael Bosch's mother, Elberta L. Bosch, in August 1985 because she had relinquished that lease in July 1989. Id. at 373 n.6. We also stated that Harry C. Bosch, Sr., had located the Hard Work placer mining claim on lot 7 and properly recorded that claim with BLM in 1982, and we concluded that the existence of that claim would give the appellants the right to use the surface of the claim to the extent their use was reasonably incident to their mining activities, assuming they could show that they, in fact, owned the claim.

The present record does not reflect that BLM has issued any further appealable decision on the issues raised in our 1991 remand. However, the record does contain a copy of a report prepared by a BLM district geologist following a surface use inspection of the Hard Work placer mining claim on January 8, 1992. That report states in the Summary, Conclusions, and Recommendations section that examination revealed that "occupancy is not justified and not reasonably incident to prospecting, mining, or processing under the mining laws." There is no indication that BLM has taken any action based on the findings of that report.

In the present case, BLM denied the request to purchase the tract because the land in question was not identified for disposal in the management framework plan (MFP) covering the district (Medford) in which the land is located. BLM also found that occupancy of the tract was not an inadvertent unauthorized use under applicable regulations.

On appeal, appellants maintain the sale of the land is compatible with land use plans and submit the parcel sought to be purchased meets the disposal criteria outlined in section 203(a) of FLPMA, 43 U.S.C. § 1713(a) (1988), and 43 CFR 2710.0-3. Appellants refer to pages 8-12 of a land report contained in the case file in support of their contention that the sale of land is compatible with land use plans. Appellants deny that the regulations require MFP identification in order for disposition, contending that satisfaction of the statutory disposal criteria is all that is required.

[1] Section 203(a) of FLPMA, 43 U.S.C. § 1713(a) (1988), provides:

A tract of the public lands * * * may be sold under this Act where, as a result of land use planning required under section

^{1/} Howard C. Bosch signed the request to purchase along with Mr. and Mrs. Michael Bosch. However, he was not named in BLM's decision. He also signed the notice of appeal.

1712 of this title, the Secretary determines that the sale of such tract meets the following disposal criteria: (1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or (2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or (3) disposal of such tract will serve important public objectives * * *. [2/]

The threshold question in determining whether a tract of public land should be sold is whether or not it is identified for disposal in the relevant land use planning documents. See 43 CFR 2710.0-6(a); 43 CFR 2711.1-1(a). 3/ We have held that in order to be eligible for public sale a tract of public land must be identified for disposal in the applicable land use planning documents. Joyce & Tony Padilla, 119 IBLA 33, 43 (1991). The case record contains a computer printout of "MFP IDENTIFIED LANDS FOR DISPOSAL," updated October 10, 1990. The lands in question are not included on that list.

Appellants rely on a "land report" to support their contention that sale of the lands is compatible with land use plans. That contention must be rejected. The land report upon which appellants rely is a report, dated July 22, 1985, that was prepared to determine whether Elberta Bosch should be issued a life estate residential occupancy lease to authorize her residence on land within lot 7. BLM issued a life estate lease for those lands on August 15, 1985. That report does not support appellants' contention that sale of the land is compatible with BLM's land use planning. 4/ Appellants have failed to show that the lands in question are identified for disposal in land use planning documents.

The only remaining question is whether appellants' request for disposal should have been considered a nomination under 43 CFR 2711.1-1(c),

2/ Those disposal criteria are repeated in Department regulations at 43 CFR 2710.0-3(a).

3/ 43 CFR 2710.0-6(a) provides that "[s]ales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with part 1600 of this title." 43 CFR 2711.1-1(a) states that "[t]racts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title."

4/ The land report states at page 1 that in 1984 "the Medford District developed its policy regarding unauthorized use. It was decided that if substantial improvements existed, a residential occupancy lease would be one alternative in resolving the trespass." We assume the policy was reduced to writing; however, no copy is contained in the record in this case.

which provides that "[n]ominations or requests for sales of public lands may be made to the District office of the Bureau of Land Management for the District in which the public lands are located and shall specifically

identify the tract being nominated or requested and the reason for proposing sale of the specific tract." If a parcel that is not identified in BLM's MFP or resource management plan (RMP) is nominated for sale, BLM must determine whether a plan amendment is warranted. Under BLM Manual section 1617.42:

[a] plan amendment is used to consider a proposal or action that is not in conformance with the plan, but warrants further consideration before the plan is revised. Proposals considered through an amendment can span the spectrum from modest sorts of changes, to changes of a substantial nature for a portion of the plan. Regulation provisions and requirements for making plan amendments apply equally to RMP's and MFP's. There are three categories of plan amendments. These categories provide appropriate variation in procedures for use in considering different kinds of proposals. The variations are based on the significance of environmental impacts and the role of resource management decisions in a program activity decision sequence.

It appears from the record and BLM's decision that BLM does not believe that appellants' request for sale "warrants further consideration." The public sale procedures outlined in BLM Manual section 2711.1 provide that "if the proposed sale is not in conformance with the land use plan but is believed to have merit," the authorized officer initiates sale action through amendment of the land use plan. However, where the proposed sale is not in conformance with the plan "or otherwise does not warrant further consideration," the authorized officer so notifies the applicant. In this case, BLM did not proceed with a plan amendment; it issued the decision under review.

While it is not clear exactly how BLM makes a determination regarding whether or not a proposed sale "warrants further consideration," the regulations at 43 CFR 2710.0-6(c)(3)(iii), regarding the policy for use of a direct sale of public land, provide that a direct sale may be used when (1) the lands offered for sale are completely surrounded by lands in one ownership with no public access, (2) the lands are needed by State or local governments or non-profit corporations, or (3) it is necessary to protect existing equities in the land or resolve inadvertent unauthorized use or occupancy of the lands. None of these conditions for direct sale is applicable in this case. The land in question has no public access, but it is not surrounded by lands in one ownership. There is no evidence of need by State or local governments or non-profit corporations. BLM protected existing equities in the land by issuing a life estate occupancy lease to Elberta Bosch in 1985; however, she relinquished that lease in 1989. The record shows that appellants' occupancy of the land is not inadvertent. We find that appellants' proposed direct sale did not warrant further consideration by BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

R. W. Mullen
Administrative Judge